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# In the Matter of the Estate of Melvin Peterson Appellant's Brief Dckt. 40615

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IN THE SUPREME COURT OF THE STATE OF IDAHO

In the Matter of the Estate of	)	DOCKET NO. 40615-2013
	)	
MELVIN PETERSON,	)	CASE NO. CV-2007-00266
	)	
Deceased.	)	
_____	)	

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APPELLANT'S BRIEF

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APPEALED FROM THE DISTRICT COURT OF THE  
FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO  
IN AND FOR BOUNDARY COUNTY

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HONORABLE JEFF M. BRUDIE  
District Judge

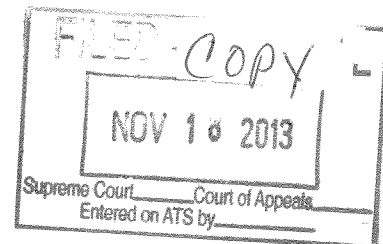
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## **I. STATEMENT OF THE CASE**

### **A. Procedural History**

This matter began with an Application for Informal Probate and Appointment of a Personal Representative of the Estate of Melvin Peterson (“Estate”). (R.Vol.I,pp.12-14) Cathie Peterson, the decedent’s daughter (“Cathie”), was appointed Personal Representative on July 26, 2007. (R.Vol.I,pp.16-17) The State of Idaho, Department of Health and Welfare (“State”) filed its creditor claim (“Claim”) against the estate on November 19, 2007 for reimbursement of Medicaid funds paid on Melvin Peterson’s (“Melvin”) behalf during his lifetime. (R.Vol.I,pp.25-27) The Claim was disallowed by the Estate with a request for itemization on November 30, 2007. (R.Vol.I,pp.28-29) The State filed an “Amended Claim” on December 10, 2007. (R.Vol.I,pp.30-32) Said Amended Claim was also disallowed. (R.Vol.I,pp.42-43) The State filed its Petition for Allowance of the Amended Claim (R.Vol.I,pp.49-51) which was heard on March 25, 2008 and granted by the court on April 4, 2008. (R.Vol.I,pp.52-53)

On May 5, 2008, the State filed a Petition to Require Payment of Claim seeking payment of \$171,386.94 of Medicaid benefits paid during Melvin’s lifetime. (R.Vol.I,pp.54-57) At the hearing on June 12<sup>th</sup>, the Court ordered the payment of the State’s Claim and further finding that the Melvin’s life estate reserved a “Gift Deed” to Cathie dated December 6, 2001, be deemed an asset of the estate for purposes of the State recovering its Claim. (R.Vol.I,pp.79-80) The Trial Court ordered the Estate to pay the Claim from these assets. (R.Vol.I,pp.79-80)

On August 6, 2008, the Personal Representative filed a Motion to Hire Appraiser. (R.Vol.I,pp.81-82) The State objected and the Court agreed, limiting the Estate to only hiring an appraiser to value the fee title of Cathie’s home, not the life estate retained by Melvin as of the date

of his death. (R.Vol.I,pp.81-82) The State also filed a Petition to Compel Sale of Home and Payment to Department (R.Vol.I,pp.107-108) which the Court granted on August 11, 2009. (R.Vol.I,pp.114-116).

The Estate appealed these rulings to the District Court. (R.Vol.I,pp.117-119) The District Court reversed the Trial Court and remanded on May 25, 2010 (R.Vol.II,pp.207-219). In reversing the Magistrate, District Court Judge Verby commented on the issues of jurisdiction raised in the first appeal: “The trial court must have concluded that it had jurisdiction over real property, which is vested in a person who is not a party to the proceeding, as well as the real property itself. ...No explanation was provided as to how these conclusions were reached.” (R. Vol.II, p.216).

Based upon the State’s actions to sell Cathie’s home, Cathie, individually, filed a Demand for Notice and Special Appearance on September 23, 2010, reserving issues of jurisdiction, venue, service of process, and due process. (R.Vol.II,pp.254-255) The State objected and moved to strike Cathie’s Special Appearance (R.Vol.II,pp.235-236),

On September 22, 2010, the State Petitioned for the Removal of Cathie as Personal Representative. (R.Vol.II,pp.242-245.) The Trial Court granted the petition (R.Vol.II,pp.264-266) and appointed the State as Successor Personal Representative (R.Vol.II,pp.277-278) , citing, in part, Cathie’s “conflict of interest” evidenced by her special appearance through separate counsel. (R.Vol.II,pp.264-266) The Estate appealed this ruling to the District Court. (R.Vol.II,pp.274-276) The District Court affirmed. (R.Vol.II,pp.350-351).

On remand, the State, the Trial Court set the matter for “Court trial” on September 29, 2011. The State, as successor personal representative, proceeded to trial on the Personal Representative’s Requested Findings of Fact and Conclusions of Law. (R.Vol.II,pp.354-356) The



Court set a briefing schedule and subsequently issued a Memorandum Opinion on December 22, 2011 directing the State to prepare and present an appropriate judgment. (R.Vol.III,pp.424-451). The Trial court entered an Order Re: Value of Estate Interest on January 10, 2012. (R.Vol.III,pp.452-454). Cathie filed her Notice of Appeal to District Court February 6, 2012. (R.Vol.III,pp.455-457).

The matter was assigned to District Judge Brudie, who ordered briefing from the parties and heard oral argument October 12,2012. The District Court issued its Opinion and Order on Appeal on November 16, 2012, affirming the Magistrate and finding that the reasoning of Idaho Department of Health & Welfare v. McCormick, 153 Idaho 468, 283 P.3d 785 (2012) and the phrase “or other arrangement” from I.C. § 56-218(4) were dispositive of this matter. (R. Vol. III,pp.529-538). Cathie timely appealed on November 27, 2012. (R.Vol.III,pp.539-542).

#### **B. Statement of Facts**

On March 26, 1997, Melvin, together with a third party, Alicia Whitman, took title to a home and property in Moyie Springs, Idaho. The testimony at trial established the home was in very poor condition with foundation and structural deficiencies. On December 5, 2001, Melvin conveyed all ownership to Cathie by deed with the following language included: “**RESERVING UNTO GRANTOR A LIFE ESTATE IN SAID PROPERTY**”. (Tr. 9/29/11, Ex. “A”)

Cathie testified that by 2001 she resided in the home and was caregiver for her father. Cathie expended over \$7,000.00 of her own money in making improvements to her very modest home from the time of the Gift Deed in December, 2001, until the State asserted a Claim to the property in this proceeding. (Tr. 9/29/11, pp. 21-36). In late 2002, Cathie and Melvin filed suit to clear title from Alicia Whitman. (Tr.9/29/11, pp. 34-35).

Upon Melvin's death on March 3, 2007, the Court appointed Cathie as Personal Representative of the Estate. As Personal Representative, Cathie filed an inventory of the Melvin Peterson Estate. Upon the Court's Order to do so, Cathie included in the inventory of the Estate of Melvin Peterson the "life estate" at a zero value.

The State's position in this litigation is well summarized by its objection to the Estate's motion to hire an appraiser. The State asserts that an appraiser is not "qualified to provide such opinion evidence because he is not an actuary or a person otherwise possessed with specialized knowledge of life expectancies". The State's position at Trial in September (and as early as 2008 when the Estate proposed to hire an appraiser) is that the only appropriate valuation of Melvin's life estate is to determine fair market value of the fee ownership of and then to apply the "life estate table contained in I.D.A.P.A. § 16.03.05.837.02 ... in order to properly determine the actual value of the life estate interest." Appellant's Motion to Augment, Exhibit "A" and "B".

The Department has been intent on using the I.D.A.P.A. Table from the beginning, refusing to permit a qualified opinion of value.

Cathie has **never** been joined in this action as an individual by virtue of any service of process or appropriate notice to her of the State's intent to sell the property that is her home.<sup>1</sup> By virtue of her position as the prior personal representative, she was aware that the State of Idaho intended to force the sale of her residence and home and appeared by special appearance without

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<sup>1</sup> The State's Motion to Sell Cathie's home was never served upon Cathie, individually. Cathie has participated since September, 2010, only pursuant to a Special Appearance.

waiving jurisdiction and due process issues. The District Court, in its appellate capacity, did not address this issue raised by Cathie on appeal.

At trial in September, 2011, the State presented no evidence as to the value of the real property or life estate in question and obtained a ruling that the Estate is the owner of interest in Cathie's home based upon the Asset Transfer Penalty Table found at I.D.A.P.A. 16.03.05.837.01 (Rule 837). (R.Vol.III,p.453).

### **C. Standard of Review**

“On appeal from a District Court’s appellate decision, this Court reviews the Magistrate Judge’s decision independently from, but with due regard for, the District Court’s decision.” Nelson v. Nelson, 144 Id. 710, 712, 170 P.3d 375, 377 (2007).

“When reviewing the trial court’s findings of fact, the appellate court will not set aside the findings on appeal unless they are clearly erroneous such that they are not based upon substantial and competent evidence .... When reviewing the trial court’s conclusions of law, however, this Court exercises free review of the court’s decision to determine whether the court correctly stated the applicable law, and whether the legal conclusions are sustained by the facts found.” Id. See also: State v. Hart, 142 Idaho 721, 723, 132 P.3d 1249, 1251 (2006).

The Magistrate’s decision appealed by Cathie, challenges the conclusions of law regarding interpretation and application of I.C. § 56-218 and I.D.A.P.A. 16.03.05.837 and the findings of fact, supporting the Magistrate’s conclusions.

## **II. ISSUES PRESENTED ON APPEAL**

- A. The Magistrate erred in holding that Melvin's Life Estate is an estate asset subject to probate and Medicaid recovery.
- B. Idaho Code § 56-218(4)(a) does not require inclusion of a life estate as an asset of a Medicaid recipient's estate.
- C. Idaho Code § 56-218(4)(b) does not abrogate common law or the Probate Code transforming life estates into estate assets.
- D. The Magistrate erred in adopting I.D.A.P.A. 16.03.05.837 (Rule 837) as a means of valuing Melvin's life estate at the time of his death.
- E. The District Court lacks subject matter jurisdiction to determine the issues before it.
- F. The Court lacks personal Jurisdiction over Cathie.
- G. The Magistrate's finding as to Cathie's investment in the property is unsupported by the evidence.

### III. ARGUMENT

#### A. **The Magistrate erred in holding that Melvin's Life Estate is an estate asset subject to probate and Medicaid recovery.**

For purposes of clarity, it is helpful to restate the legal nature of the interests created in the Gift Deed from Melvin to Cathie. (Tr. 9/29/11, Ex. "A").

Fee simple absolute title by a grantor can be split during the conveyance into a present estate and a future estate. The most common present estate is the life estate. The creation of the life estate usually involves words indicating that the possession is for life or some similar limitation .... without language giving the life estate owner the right to dispose of the property, the future interest cannot be conveyed by the life estate owner ..... there are two types of future estates associated with the life estate. These are the reversion and the remainder .... A remainder is used when the grantor wants to convey ownership of the future interest to a third party.

121 Am.Jur. – Proof of Facts 3d, 101 (2011).

It appears that Melvin conveyed all future interest in the property, a vested remainder interest, to Cathie subject only to a reserved life estate. As indicated above, Melvin lost all right to any future interest conveyed to Cathie, upon recording the Gift Deed in 2001. His only reserved present interest was a life estate. The question raised on this appeal is whether the Magistrate properly deemed the life estate an asset of Melvin's estate for purposes of satisfying the State's reimbursement claim.

#### B. **Idaho Code § 56-218(4)(a) does not require inclusion of a life estate as an asset of a Medicaid recipient's estate.**

Idaho Code § 56-218(4)(a) provides that the term "estate" shall include "all real and personal property and other assets included within the individual's estate *as defined for purposes of state probate law*". I.C. § 56-218(4)(a)(2012).

The Idaho Probate Code imposes a duty upon the personal representative to inventory and appraise all “property owned by the decedent at the time of his death, listing it with reasonable detail, and indicating as to each listed item its fair market value as of the date of the decedent’s death”. I.C. § 15-3-706 (2012).

Idaho Code § 15-1-201(16) defines an “estate” as “all property of the decedent, including community property of the surviving spouse, subject to administration, property of trusts, and property of any other person whose affairs are subject to this code as it exists from time to time during administration”. Idaho Code § 15-1-201(16)(2012).

“A life estate is an interest in real property, the duration of which is limited by the life of some person.” Tobias v. State Tax Commission, 85 Idaho 250, 255, 378 P.2d 628, \_\_\_\_ (1963); quoting Thompson on Real Property, Volume II, § 780.

“It is important to realize, however, that if the deceased owned a life estate during his or her life, the life estate will terminate upon death and will not be part of the estate.” 121 Am.Jur. — Proof of Facts 3d, 101 (2011).

A life estate terminates on death of the person to whose life the estate is limited. In re Estate of Moore, 714 N.E.2d 675 (1999); Collins v. Held, 369 N.E.2d 641 (1977); Tobias v. St. Tax Commission, *supra*.

The Magistrate ordered Cathie to include the life estate as an asset of the Estate. The Trial record contains no testimony or evidence that would indicate a value of the life estate, or even any authority that the life estate is a probate asset properly included in Melvin’s estate. The Magistrate relied entirely upon an improper reading of Idaho Code § 56-218 and deferring to a Second District decision In re: Grothe.

Relying upon the Second District decision in Grothe, with really no independent analysis, the Trial Court concluded that Melvin's life estate must be included in the estate assets. Grothe concluded that the Idaho Legislature, in adopting Idaho Code § 56-218, must have intended to abrogate the common law so as to include life estates as probate assets for purposes of Medicaid recovery.

From this conclusion, the Magistrate compounds the error by erroneously applying Rule 837 to "value" the life estate.

The Trial Court's Memorandum Opinion asserts that "[t]he primary issue in this case is whether the *gifted life estate remainder interest*<sup>2</sup> can be included as an estate asset ....pursuant to I.C. § 56-218(4). (R.Vol.III, p.427).

The Magistrate erroneously ruled that Melvin's life estate is included as an estate asset that is subject to Medicaid recovery, relying upon the Second District Magistrate Gaskill's decision in The Matter of the Estate of Grothe.

**C. Idaho Code § 56-218(4)(b) does not abrogate common law or the Probate Code transforming life estates into estate assets.**

"Words and phrases are construed according to the context and the approved usage of the language, but technical words and phrases, and such others as have acquired a peculiar and appropriate meaning in law, or are defined in the succeeding section, are to be construed according to such peculiar and appropriate meaning or definition." Idaho Code Ann. § 73-113 (2012).

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<sup>2</sup> The Trial Court does not explain or define this term and it appears to misstate the legal property interests that are at issue in this matter. Melvin reserved to himself a "life estate" but

The succeeding section provides definitions as follows:

- (d) “Property” includes both real and personal property;
- (e) “Real property” is coextensive with lands, tenements and hereditaments, possessory rights and claims.

Idaho Code Ann. § 73-114 (2012)

The plain language of the statute at issue was misread by the Trial Court to require the inclusion of Melvin’s life estate. A life estate is a possessory right or claim only for the term of the measuring life or term

The Medicaid Recovery Statute provides that, the term “estate” shall include:

....

- (b) any other real and personal property and other assets in which the individual had any legal title or interest at the time of death, to the extent of such interest, including such assets **conveyed** to a survivor, heir or assign of the deceased individual through joint tenancy, tenancy in common, survivorship, life estate, living trust or other arrangement.

I.C. § 56-218(4)(2011)  
[emphasis added]

“The rules of common law are not to be changed by doubtful implication.... No statute is to be construed as altering the common law further than its words and circumstances impart.” Moon v. Bullock, 65 Idaho 594, \_\_\_, 151 P.2d 765, 711 (1944) [overruled on other grounds].

The Magistrate relied upon subsection (b). However, this subsection does not state that a decedent’s life estate shall be included in the estate. Rather, it seeks to include assets in which the decedent held a legal title or interest “at the time of death, to the extent of such interest”.

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granted the “remainder interest” to Cathie.



The statute specifies certain assets to be included in the estate: “such assets conveyed [by decedent] to a survivor...through joint tenancy, tenancy in common, survivorship, life estate, living trust or other arrangement.” Subsection (b) makes no mention of life estates “retained” by the decedent at the time of death, only a life estate (or other interest) that were conveyed to a “survivor, heir or assign of the deceased individual” during decedent’s life.

Subsection (b) recognizes that a Medicaid recipient may have conveyed his property to heirs for his lifetime in such a manner that a future interest exists. The statute seeks to recapture that interest to the estate for Medicaid recovery purposes. For example, a life estate to Cathie would have left a future interest after Melvin’s death that may or may not have been expressly retained to Melvin’s estate. Subsection (b) ensures that that interest be recaptured and included in the estate for Medicaid recovery purposes. Likewise, a conveyance by Melvin to Cathie in joint tenancy, tenancy in common or with right of survivorship, would require that the estate recover that future interest to Melvin’s estate for Medicaid recovery, an occurrence that may not have been expressly provided. None of these circumstances apply to Melvin’s retained life estate which terminated at his death.

The plain language of subsection (b) indicates that the legislature intended to identify those assets in which the decedent’s future interest succeeds, continues, (or potentially exists) after his death, i.e. a remainder or reversionary interest after a life estate conveyance ceases upon death, or an interest that may otherwise be subject to survivorship transfer such as co-tenancy or joint tenancy. But the statute clearly does not specify that a life estate held by decedent at time of death is an asset of the estate for recovery purposes.

The District Court suggests this circumstance falls within the “or other arrangement” phrase of subsection (b), noting the “policy” and intent of recouping Medicaid benefits. (R.Vol.III, p.536).

Since Idaho Code §56-218(b) does not specifically include Melvin's life estate into estate as an asset, the common law doctrine that life estates terminate on death is not abrogated by I.C. § 56-218. It was error for the Magistrate to hold otherwise.

**D. The Magistrate erred in adopting I.D.A.P.A. 16.03.05.837 (Rule 837) as a means of valuing Melvin's life estate at the time of his death.**

The State of Idaho argues that I.D.A.P.A. 16.03.05, entitled Rules Governing Eligibility for Aid to the Aged, Blind and Disabled, dictates the value of Melvin's life estate at the time of his death.

Rule 837 provides its own explanation as to when, and under what circumstances, the Rule is to be applied:

**RULE 837 - LIFE ESTATE AS ASSET TRANSFER.**

01. **Transfer of a Remainder Interest.** When a life estate in real property is retained by an individual, and a remainder interest in the property is transferred during the look back period for less than the fair market value of the remainder interest transferred, the value of the uncompensated remainder is subject to the asset transfer penalty as described in Sections 831 through 835 of these rules. To compute the value of the life estate remainder, multiply the fair market value of the real property at the time of transfer by the remainder factor for the participant's age at the time of transfer listed in the following table: ...

I.D.A.P.A. 16.03.05.837  
[underline added]

A simple reading of Rule 837 makes clear that it was not intended to apply in this circumstance. The Rule clearly states the intent to compute a "transfer penalty" where a Medicaid recipient/applicant has improperly transferred a remainder interest and retained to himself a life estate "during the look back period for less than the fair market value of the remainder interest".

By its very language above, the Rule, and the computation table within it, is used during the lifetime of an applicant holding a life estate to determine eligibility, or appropriate penalty, for transfers during the look back period.<sup>3</sup> It is reasonable to assume that Medicaid applications are submitted by living persons, not deceased. As such, it is obvious error to apply a transfer penalty calculation table that assumes the holder to be alive, to determine the value of a life estate at time of the holder's death. The presumption of Rule 837 is that the life estate holder has a future life expectancy.

Valuation of a life estate during the holder's lifetime, is a recognized process.

“The value of the life estate is determined by a formula which takes into account the age and life expectancy of the life tenant. The longer the life expectancy of the life tenant, the greater is the value of the life estate”.

West v. Tax Commission, 99 Idaho 26, 27,  
576 P.2d 1060, 1061 (1978).

At no time does the Magistrate provide authority for the application of Rule 837 to a decedent's life estate at the time of death. Again, the Trial Court accepts the Grothe decision wholesale, with no independent analysis. The State resisted the estate's attempt to retain an appraiser to determine the value of Melvin's life estate at date of death. (R. Vol. I, 82-82). See Motion to Augment, Exhibits “A” and “B”.

The process of determining an asset transfer penalty during the lifetime of the Medicaid participant certainly involves actuarial determinations, however, the valuation of a life estate, at the time of the measuring life's death, no longer (logically) involves those same future actuarial determinations. The decedent has died. There is no accounting for future life expectancy.

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<sup>3</sup> Asset transfer penalties are assessed pursuant to Rules 831 through 836 to Medicaid

The Idaho Probate Code requires only that a Personal Representative prepare an inventory of property “owned by the decedent at the time of his death”. Idaho Code § 15-3-706. It does not require a determination of assets owned prior to the death of the decedent or up to the date of death, but only those assets at the time of his death. It is undisputed that, at common law, a life estate ceases to exist at the death of the holder and therefore has no value, nor is it an asset of the estate. Tobias v. State Tax Commission, 85 Idaho 250, 255, 378 P.2d 628, \_\_\_\_ (1963); quoting Thompson on Real Property, Volume II, § 780.

The Trial Court’s application of Rule 837 to set the life estate value is improper and should be reversed and remanded with instruction that the life estate has no value.<sup>4</sup>

**E. The District Court lacks subject matter jurisdiction to determine the issues before it.**

“It is the general rule that where title to real property is an issue between an estate and its heirs and a third person, such issue must be tried in an independent action brought for that purpose in a competent tribunal and cannot be tried by the probate court.” In re Lundy’s Estate, 79 Idaho 185, 193, 312 P.2d 1028, 1032 (1957). “A Probate Court cannot try the question of title as those issues must be brought in District Court.” In re Blackinton’s Estate, 29 Idaho 310, 158 P. 492 (1916).

The Personal Representative’s personal liability for issues “between the estate and the Personal Representative, individually, may be determined in a proceeding for accounting .... or other appropriate proceeding.” I.C. § 15-3-808(2013). In other words, the Personal Representative

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participants in long term care or H.C.B.S. See I.D.A.P.A. 16.03.05.831.

<sup>4</sup> The State presented no evidence of value to the life estate other than applying Rule 837.

is not personally accountable or liable except through a separate proceeding which includes process and acquisition of the Court's jurisdiction. That was not accomplished in this case.

The State sought and received a Court Order that the Estate has a percentage interest based upon the asset transfer tables set forth in Rule 837. This finding is beyond the subject matter jurisdiction of the probate court. As indicated all along, Cathie is appearing only through a special appearance reserving jurisdiction, both personal and subject matter. The State failed to achieve process upon Cathie or her property in doing so.

**F. The Court lacks personal Jurisdiction over Cathie.**

Cathie was originally appointed as personal representative of the Estate. At no time has she been personally served with any process as an interested party holding legal title to the real property the State seeks to sell so as to satisfy its claim.

A judgment entered without meeting the jurisdictional requirements of service of process or due process, deprives the court of jurisdiction over the person and is void. McGlooin v. Gwynn, 140 Idaho 727, 100 P.3d 621 (2004)

“The right to procedural due process guaranteed under both the Idaho and United States Constitutions requires that a person involved in the judicial process be given meaningful notice and a meaningful opportunity to be heard.” McGlooin v. Gwynn, 140 Idaho 727, 729, 100 P.3d 621, 623, 2004 WL 2377859 (2004)

Cathie submitted to the Court's jurisdiction as Personal Representative at the time of her appointment in 2007. Idaho Code §15-3-602. The Trial Court continued to have jurisdiction over Cathie after her removal as to her position as “Personal Representative”, but at no time has

the State provided meaningful due process to Cathie, individually, as to her interest in the real property that they seek to sell so as to satisfy the State's Claim against the Estate.

Cathie has participated subject only to a Demand for Notice and Special Appearance re-serving these issues of jurisdiction. This Court is asked to reverse the Trial Court's Order Re: Value of Estate Interest as it was entered unlawfully and without due process upon Cathie, individually.

**G. The Magistrate's findings as to Cathie's investment in the property is unsupported by the evidence.**

The Magistrate's "findings of fact are reviewed to determine whether the evidence supports the findings of fact, and whether the findings of fact support the conclusions of law." Barry v. Pac. West Const. Inc., 140 Idaho 827, 831, 103 P.3d 440, 444 (2004).

The testimony at trial was undisputed that Cathie invested over \$7,000.00 into improvements into the property in the belief that she owned the property from time of the deed in December, 2001. Tr. 9/29/11, pp. 21-36. Exhibit 1 totals \$2,982.51 of expenditures on the property, not including \$4,000.00 for new windows and numerous others for which receipts no longer exist. Tr. 9/29/11, p.21. She testified the property was in significant disrepair when she took title and that a quiet title was necessary to clear a third party's ownership from the title. From 2001 until 2007 when Melvin died, the State took no action to give Cathie notice of their intent to take her home from her and the investment she had made into improving that home. Even the State's Notice of Statutory Claim letter dated April 24, 2007 (Ex. 5) acknowledges that at common law a life estate "dies" with the life tenant, but reiterates the State's misreading of Idaho Code §56-218 to include Melvin's life estate in his estate for Medicaid recovery purposes.

Inexplicably, the Trial Court disregarded Cathie's documented investment into the property made in reliance upon her legal title to the property. This Court is asked to reverse the Trial Court and remand with instruction to allow Cathie recovery of her investment into the property.

#### **IV. FEES AND COSTS ON APPEAL**

Appellant recognizes this issue to perhaps be one of first impression. To the extent allowed, Appellant requests an award of attorney's fees and costs pursuant to I.A.R. 40 and 41 and pursuant to Idaho Code § 12-117. Idaho Code § 12- 117 provides for award of attorney's fees and costs in any civil proceeding involving the State as an adverse party ... if [the Court] finds that the non-prevailing party acted without a reasonable basis in fact or law" I.C. § 12-117. Appellant requests award of attorney's fees and costs on appeal.



**V. CONCLUSION**

This Court is asked to reverse the Trial Court and remand with instructions to the Magistrate to make findings and conclusions consistent with this Court's opinion.

DATED this 13<sup>th</sup> day of November, 2013.

FEATHERSTON LAW FIRM, CHTD

By: 

BRENT C. FEATHERSTON  
Attorney for Cathie Peterson  
Individually

### CERTIFICATE OF MAILING

I hereby certify that on the 13<sup>th</sup> day of November, 2013, I caused a true and correct copy of the foregoing document to be served upon the following person(s) in the following manner:

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By 